



# GIFTS

## 5<sup>th</sup> ETHICS COUNSELOR COURSE

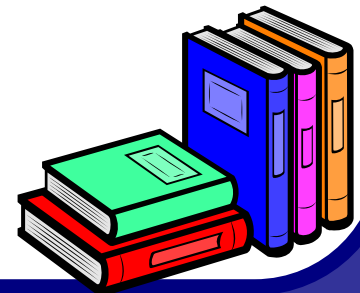
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**Army Materiel Command**

# SOURCES OF AUTHORITY

- Standards of Ethical Conduct for Employees of the Executive Branch
  - 5 C.F.R. 2635
- Joint Ethics Regulation (JER), DOD 5500.7-R
- 5 U.S.C. § 7342 (Foreign Gifts)
- 5 U.S.C. § 7353 (Federal Employees)
- 10 U.S.C. §2601/2608 (Gifts to Government)
- 31 U.S.C. § 1353 (Travel Payments)

Outline B-1



# AGENCY GIFT STATUTES

- Army Specific Gift Statutes:
  - Gifts to United States Military Academy – 10 U.S.C. § 4356.
- Navy Specific Gift Statutes:
  - Gifts to the Naval Academy – 10 U.S.C. §§ 6973 and 6974.
  - Gifts to Vessels – 10 U.S.C. § 7221.
  - Gifts for Welfare of Enlisted Members – 10 U.S.C. § 7220.



# Basic Questions For The Recipient

- Is it a gift?
- From Whom?
- Why am I getting the gift? Official Position?
- What's the cost?
- What's the number for my Ethics Counselor?



# Basic Thoughts For the EC

- Is it a gift?
- Why did they receive gift?
- Does an exclusion apply?
- Does an exception apply?
- Is there an appearance problem?
- Do we decline?
- How do we decline?



# GIFTS FROM OUTSIDE SOURCES



*"Let me get this, but keep in mind that you'll pay for it in other, more subtle ways later on."*

# Gifts From Outside Sources

- 5 C.F.R. 2635.202(a)
  - Employee shall not, directly or indirectly, **solicit or accept** a gift
  - From a **prohibited source** or
  - Given because of the employee's **official position**



# Gifts from Outside Sources

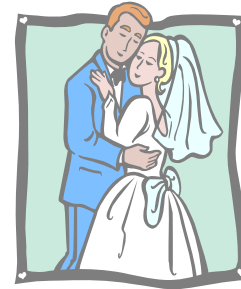
- “Prohibited Source” includes any person or entity that
  - Is seeking official action
  - Does or seeks to do business
  - Is regulated by, or
  - Has interests substantially affected by employee’s official duties
  - Organization whose majority is made up of one or more of the above





# Gifts from Outside Sources

• Indirect gifts given to:

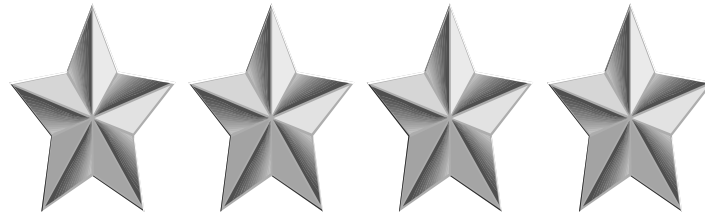


- Parent, spouse, sibling, child, dependent relative because of that person's relationship to the employee
- Any other person, including **charity**, on the basis of designation, direction or recommendation of the employee

# Gifts from Outside Sources

- “Official Position” Test

Gift would not have been solicited, offered or given had the employee not held the status, authority or duties associated with his position



# Gifts From Outside Sources

- **Is it a Gift?**

- Any gratuity, favor, discount, entertainment, hospitality, loan, forbearance or any other item having **monetary value**
- It includes services
- It includes gifts of training, transportation, travel, lodging and meals

- **Exemption??**

Outline B-5



# Gift Exemptions

- *FOOD AND REFRESHMENTS*
- The coffee and donut rule
  - Modest amounts and type of food, such as soft drinks, non-alcoholic refreshments, light snacks
  - Not part of a meal



# Gift Exemptions

**GREETING CARDS** and items with *little intrinsic value* such as plaques, certificates and trophies which are intended solely for presentation



# Gift Exemptions

- REWARDS AND PRIZES given to competitors in contests or events, including random drawings, that are
  - Open to the public
  - Entry not part of official duties

## Rewards and Prize Killers

- Automatic registration in drawing for conference attendees
- Completing conference evaluation sheet enters participant into drawing
- Purchasing a specified amount of goods

# Gift Exemptions

- DISCOUNTS AND BENEFITS, including favorable rates available to -
  - General public
  - Class of all Government employees
  - All military personnel

Whether or not restricted by geography

Outline B-5



# What is not considered a gift?



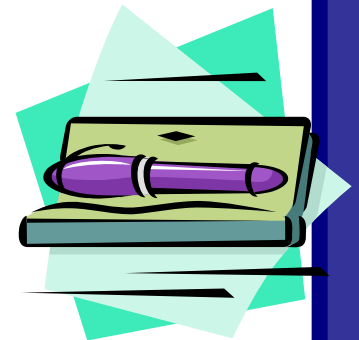
- Paid by the US Government or secured under contract
- Paid by the employee
- Accepted by the US Government under statute





# Exception – “The 20/50 Rule”

- \$20 per source, per occasion
- \$50 max per source, per year
- FMV is retail value of the gift
- No cash or investment instruments
- Can decline items to keep it at \$20 or under but may not pay differential over \$20



# Gifts Based On Personal Relationship Or Family Friendship

- Circumstances make it clear that the gift is motivated by a family relationship or personal friendship rather than the position of the employee.
- Factors include history of the relationship and whether the family member or friend personally pays for the gift.



# Discount or Similar Benefits

- Benefits, such as reduced fees, offered by professional organizations in which membership is unrelated to Government employment
- Benefits offered to all classes of government, e.g. all uniformed
- Benefits offered from other than prohibited source and class is not based on position, rank or rate of pay

Outline B-8

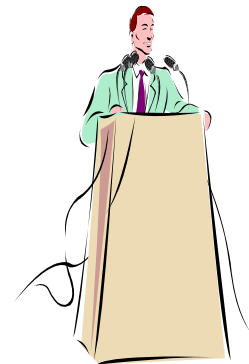


- Awards
  - Meritorious public service or achievement
  - Grantor not impacted by recipient's performance of duties
  - Higher standards for cash and awards > \$200
- Honorary Degrees
  - Institution of higher education
  - Examine timing of award



# You are invited to ... Widely Attended Gatherings

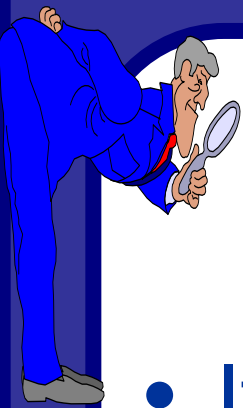
- Participating as speaker – attendance free for day of event
- Merely attending -
  - Agency interest determination
  - Gift from other than event sponsor
    - >100 people
    - FMV less than \$305
- Free attendance .
  - No travel benefits!
  - Do not combine with 31 USC 1353 travel.
  - Include waiver of all or part of a conference or other fee or the provision of food, refreshments, entertainment, instruction and materials furnished to all attendees as an integral part of the event.
- Army: See SECARMY 2 March 2001 Memo



# Gift Exceptions ... More and More

- Gifts based on personal business relationships
- Social invitations from other than prohibited sources
- Meals, refreshments and entertainment in foreign areas
- Gifts at Ship Launch and Similar Ceremonies

Outline B-12,  
B-13



# Use Gift Exceptions Wisely

- If a gift falls within one of the exceptions, will the acceptance of the gift violate any basic obligation of public service, including the obligation to avoid creating the appearance of an ethical violation (5 C.F.R. 2635.204)
- May still be appropriate to decline a gift

**Over in Mt. Pilot they do things their own way. Here in Mayberry, Federal employees may not:**



- Solicit or coerce the offering of a gift.
- Accept a gift in return for being influenced.
- Accept a gift in violation of statute.
- Accept gifts from the same or different sources so frequently that a reasonable person would question integrity.
- Accept Vendor Promotional Training.



- Refuse gift if possible
- Tangible items - return gift or pay FMV
- Intangible items - pay FMV
- Perishable items - after consulting with supervisor or ethics counselor:
  - Donate to charity
  - Share within office
  - Destroy

All of this because of a  
“free” gift.



# Gifts to Wounded Soldiers and Families



# JER Change 6

- 3-400 Acceptance of Gifts by Injured or Ill Service-members and Family Members.
- 3-401 Includes active duty, enlisted members of the Reserve and all members of National Guard.
- Incurring injury or illness under certain conditions
- Retroactive to September 11, 2001

# JER Change 6

- Does not apply to:
  - Gifts from foreign governments
  - Gifts accepted in return for being influenced in the performance of official act
  - Solicited or coerced gifts
  - Gifts that violate any statute

# JER Change 6

## Written Ethics Opinion -

Gifts with an aggregate value greater than “minimal value” per source, per occasion, or with aggregate value of more than \$1000 in any calendar from any one source requires a written ethics opinion.

# JER Change 6

- The gift is not offered in a manner that specifically discriminates among DoD employees because of official responsibility
- The donor does not have interests that may be affected by performance of duties
- Acceptance would not cause a reasonable person to question integrity of DoD program
- EC may make a blanket determination

# GIFTS TO THE GOVERNMENT



# 10 USC 2601

- FY 2006 NDAA amends 10 USC 2601
- Authority for government to accept gifts to benefit members, dependents and civilian employees who incur a wound, injury or illness in the line of duty
- Types of gifts include real property, personal property, money or services
- Implementing regulations in DoD Financial Management Regulation (FMR)



# 10 USC 1588

- Authorizes the Secretary to accept voluntary services
- Medical, dental nursing or healthcare
- Museums
- Family Support
- Child Development
- Library and Education
- Religious
- Housing
- Employment Assistance to Spouses
- MWR
- Funeral Detail

# Voluntary Services

- Limitations
  - Supervising to the same extent as a compensated employee
  - Ensure that volunteer is licensed in accordance with applicable law
  - No policy making or managerial responsibilities
  - No compensation, except for incidental expenses

# FOREIGN GIFTS





# FOREIGN GIFTS

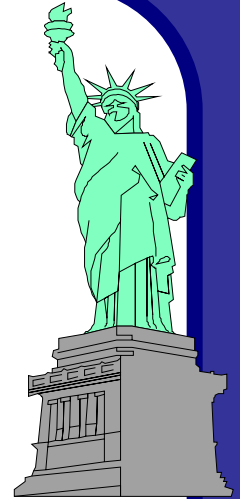
- U.S. Constitution (Art I, Sec. 9, Cl. 8) prohibits acceptance of any “present, Emolument, Office or Title from a King, Prince or foreign state” without the consent of Congress
- Congress consented to acceptance of gifts from Foreign Governments in 5 USC § 7342

# FOREIGN GIFTS



- Implemented by DODD 1005.13
- No solicitation of gift
- Individual may accept gift of “minimal value” (retail value in U.S. at time of acceptance of \$305 or less)
- Must aggregate (JER 2-300.b):
  - Multiple gifts from donor at single presentation
  - Gifts to spouse

# FOREIGN GIFTS

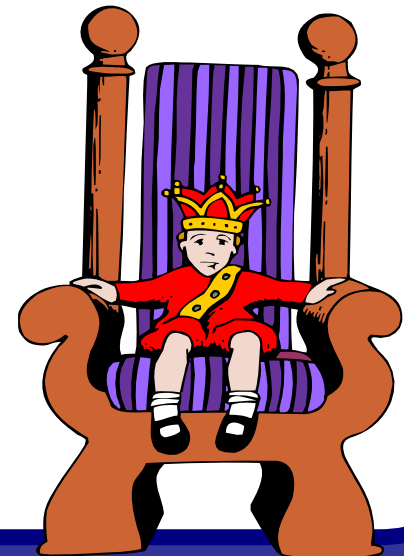


- Gifts in excess of “minimal value”
  - attempt to refuse (explain law)
  - may accept if refusal would result in embarrassment or affect foreign relations
- Accept as Gift to the United States
- Gift must be reported to and deposited with the approval authority within 30 days

# FOREIGN GIFTS

- Gift in excess of “minimal value” will be:
  - Returned to donor (at U.S. expense)
  - Retained for use within DOD Component
  - Forwarded to GSA for utilization decision or disposal (sale)
  - Recipient may purchase
    - Negotiated sale at FMV

Outline B-15



# GIFTS BETWEEN EMPLOYEES





# Gifts Between Employees

- 5 C.F.R. 2635.302(a)
- An employee may not:
  - Directly or indirectly, give a gift or make a donation toward a gift for an official superior
  - Solicit a contribution from another employee for a gift to either his own or the other employee's official superior

# Gifts Between Employees

- 5 C.F.R. 2635.302 (b)
- An employee may not, directly or indirectly, accept a gift from an employee receiving less pay than himself unless:
  - No superior-subordinate relationship; and
  - There is a personal relationship that would justify the gift

# Gifts Between Employees

- 5 C.F.R. 2635.304(a)
- On an **occasional basis**, including traditional gift giving situations
  - Items with value of \$10 or less (no cash)
  - Food and refreshments shared in the office
  - Personal hospitality in subordinate's home
  - Host/hostess gifts



# Gifts Between Employees

- 5 C.F.R. 2635.304(b)
- On **special infrequent occasions**, a gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or employee receiving less pay
  - Occasion of personal significance
  - Occasion that terminates superior-subordinate relationship



# Gifts Between Employees

- Solicitations -
- Authorized for special infrequent occasions and for food and refreshments to be shared in the office
  - Voluntary contributions
  - Nominal amounts (\$10), although employees are free to donate more
  - JER 2-203.b



# Gifts Between Employees

- Appropriate to the occasion
- \$300 per donating group (JER 2-203)
  - Aggregate gifts if employee is in more than one donating groups
  - Gifts to spouses
  - Exclude food and entertainment at event marking departure
  - Pieces of a larger gift

Outline B-17



# Gifts Between Employees

- JER 2-203(a)(3) - “Perry Amendment”
- Gift from donating group may exceed \$300 when:
  - Appropriate to the occasion
  - Termination of superior-subordinate relationship
  - **“It is uniquely linked to the departing employee’s position or tour of duty and commemorates the same”**

# Gifts Between Employees

- Helpful Hints:
  - Be proactive - be part of the planning process
  - Keep the number of donating groups to a reasonable number (no competition)
  - Ensure donation is voluntary
  - Remember purpose is to honor departing superior not to embarrass





# TRAVEL PAYMENTS FROM NON-FEDERAL SOURCES



# Travel Payment from Non-Federal Sources

- Rule: Agencies may accept payment from a non-Federal source for travel, subsistence, and related expenses in connection with an employee's attendance at a meeting or similar function relating to his official duties
- 31 U.S.C. § 1353
- 41 C.F.R. Chapter 304
- JER Section 4-101

# Conditions for Acceptance

- Attendance at a meeting or similar function that is related to employee's official duties
- Function takes place away from duty station (employee must be in a travel status)
- Employee attends in an official capacity
- Acceptance would not bring into question the integrity of DOD programs (conflict analysis)
- Acceptance generally approved in advance
- No solicitation



# Meeting or Similar Function

- **Includes:** conferences, seminars, speaking engagements, symposia, training courses, awards programs, or other similar event sponsored or co-sponsored by a non-Federal source
- **Excludes:**
  - Meetings or events required to carry out an agency's mission
  - Promotional Vendor Training or other meetings held for the primary purpose of marketing product/services

# 1353 Payments - Miscellaneous

- Travel on Commercial Air
- Gift to Spouse
- Payments in excess of Per Diem Limits
- Payment in Kind or Reimbursement
- Reporting Requirements



Outline B-19-23

# Gifts of Travel From Foreign Governments

- Rule: An employee may accept gifts of travel or expenses from a foreign government for travel taking place entirely outside the U.S. of more than minimal value if acceptance is consistent with the interests of the U.S.
- 5 U.S.C. § 7342(c)(1)(B)(ii)

# Gifts of Travel From Foreign Governments

- More than “Minimal Value” then acceptance must be in the interest of U.S. Government
- Travel Entirely Outside U.S.
- Solicitation is prohibited
- Approval Authorities
- Reporting Requirements

# UPGRADES AND BUMPING





# Upgrade on Official Travel

- An employee may upgrade to first class or business class when it is the result of:
  - An on the spot upgrade available to public
  - A promotional offer
  - Use of personal funds or frequent flyer miles
  - Membership in club or group
- An upgrade may not be accepted if provided on the basis of the employee's grade or position

# Bumping on Official Travel

- Involuntary – Any compensation received belongs to the government
- Voluntary – Any compensation received belongs to the employee provided:
  - Delay will not interfere with mission
  - Does not result in any additional cost to the government (employee must incur these expenses)

# SUMMARY

- Know the rules
- Use common sense
- Be proactive
- Make the call!

